

REMARKS

Claims 1-3, 5, 7-12, 21, 22 and 24-26 are now present in this application. Claim 26 has been amended.

Reconsideration of the Application is respectfully requested.

Objection to Claim 26

Claim 26 is objected to because there is no proper antecedent basis in claim 24, from which claim 26 depends, for the word, "frame." Applicants agree, and have amended claim 26 to depend from claim 25, as suggested by the Examiner, thereby overcoming the objection.

Reconsideration and withdrawal of this objection are respectfully requested.

Rejections Under 35 U.S.C. §102

Claims 1-3, 7-10, 12, 21, 22 and 24-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 3,709,389 to Steltz. This rejection is respectfully traversed.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358,

1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Independent claim 1 positively recite a combination of features including a hydraulic device that is sized and constructed to be conventionally used while being remotely operated while being suspended from a crane, comprising (1) a body portion that is sized and constructed to be conventionally used while being operated while being suspended from the crane; (2) a cylinder for holding hydraulic fluid connected to the body portion; (3) at least a first member connected to the body portion and the cylinder and movable by hydraulic pressure applied to the cylinder; (4) a pump connected to the cylinder for pumping pressurized fluid to the cylinder; (5) a power source for providing power to the pump; (6) a controller connected to the body portion and electrically connected to the pump, the controller including a receiver for receiving a control signal and transmitting power from the power source to the pump based on the control signal, and a manually operated control switch located at the body portion for transmitting power from the power source to the pump; and (7) a transmitter for remotely transmitting the control signal to the receiver to operate the pump when the hydraulic device is suspended from the crane; and wherein the hydraulic device is a hydraulic dumpster, the first member is a door, and the cylinder is pressurized to open the door.

Independent claim 8 positively recites a combination of features, including a hydraulic system that is sized and constructed to be conventionally

used while being remotely operated while being suspended from a crane, said system comprising (1) a body portion that is sized and constructed to be conventionally used while being operated while being suspended from the crane; (2) a pump for pumping fluid to a hydraulic cylinder on the device suspended from the crane; (3) a power source for providing power to the pump; (4) a controller electrically connected to the pump and including a receiver for receiving a control signal for controlling the transmission of power to the pump, and a manually operated control switch located at the hydraulic system suspended from the crane for transmitting power from the power source to the pump independently of transmission of power based on the control signal; and (5) a transmitter for remotely transmitting the control signal to the receiver to operate the pump while the hydraulic system is suspended from the crane; and wherein the hydraulic system is a hydraulic dumpster, a door is located on the dumpster, and the hydraulic cylinder is pressurized to open the door.

Steltz does not disclose these positively recited features. For example, Steltz's refuse container is not sized and constructed to be conventionally used while being suspended from a crane. Nor does Steltz' refuse contained use a pressurized cylinder to open a door, as recited.

Steltz's doors 13 are provided to enclose opening 12, through which refuse is introduced into the container 1, and are manually openable and closable. See, for example, col. 3, lines 17-25 of Steltz. Steltz's doors 13 are not

operated by hydraulically pressurized cylinders. The only element operated by hydraulic pressure in Steltz is the pivotable compactor 23, which is not a door.

In this regard, Applicant respectfully submits that the Office Action incorrectly states that Steltz uses, “a cylinder (30,31) to open or close a door (43) movable by hydraulic pressure applied to the cylinder.” In actuality, no door is operated by hydraulic pressure in Steltz.

Accordingly, the Office Action does not make out a prima facie case of anticipation of the claimed invention by Steltz.

Reconsideration and withdrawal of this rejection of claims 1-3, 7-10, 12, 21, 22 and 24-26 are respectfully requested.

Claims 5 and 11 stand rejected under 35 USC §103(a) as unpatentable over Ward in view of anticipated by U.S. Patent Re. 36,685 to Bounds. This rejection is respectfully traversed.

This rejection is unclear because it is said to be based on Ward and Bounds, but the body of the rejection never mentions Ward, a reference which the Examiner indicated in a personal interview held on May 4, 2005, does not anticipate claim 1, from which claim 5 depends, and does not anticipate claim 8, from which claim 11 depends. The body of the Office Action relies on Steltz as the base reference to be modified by Bounds.

Under the circumstances, it would appear that this rejection is actually based on Steltz in view of Bounds, and that is how the rejection will be treated.

Claim 1, from which claim 5 depends, and claim 8, from which claim 11 depends, are not anticipated by Steltz, for reasons discussed above. Moreover, Bounds is not applied to remedy the deficiencies of Steltz.

Accordingly, even if it were obvious to modify Steltz in view of Bounds, as suggested, the Office Action has not made a *prima facie* case that the resulting modified version of Steltz would either anticipate or render obvious the claimed invention recited in claim 5 or claim 8, and this rejection should be withdrawn.

Discussion of Possible New Claim

Applicants submitted a copy of a proposed claim for discussion purposes to Examiner Chin. Examiner Chin indicated, in a telephone discussion on March 23, 2006, that the proposed claim appears to patentably define over the applied art. The proposed claim reads, as follows:

Claim X. (New) A hydraulic device that is sized and constructed to be conventionally used while being remotely operated while being suspended from a crane, said device comprising:

a hydraulic dumpster body portion having a container with an open top and a bottom having at least one hinged door that is opened and closed by hydraulic pressure and that is sized and constructed to be conventionally used while being suspended from the crane;

a hydraulic power enclosure containing a pump, a controller and power source having a mount on an exterior side of the enclosure for connecting the

enclosure to the hydraulic dumpster body portion, the mount having a planar portion with two rails extending away from the enclosure and forming a connection between the enclosure and body portion;

a cylinder for holding hydraulic fluid connected to the body portion located in the hydraulic power enclosure, the at least one hinged door being movable by hydraulic pressure applied to the cylinder;

the pump being connected to the cylinder for pumping pressurized fluid to the cylinder;

the power source being for providing power to the pump;

the controller being connected to the body portion and electrically connected to the pump, the controller including a receiver for receiving a control signal and transmitting power from the power source to the pump based on the control signal to control movement of the at least one hinged door,

a manually operated control switch located at the body portion for transmitting power from the power source to the pump to control movement of the at least one hinged door; and

a transmitter for remotely transmitting the control signal to the receiver to operate the pump when the hydraulic device is suspended from the crane.

Applicant respectfully requests that Examiner Chin consider entering such a claim to this application by Examiner's Amendment, as an additional reason to place the Application in condition for allowance, especially in view of the repeated

piecemeal prosecution history of this Application that contains a number of indications of allowance of claimed subject matter, then withdrawals of those indications, and issuance of a new Office Actions that rejects all pending claims. This has been very costly and time consuming for Applicant and Applicant respectfully submits that it is only fair and equitable to permit entry of a claim like that discussed, above, to allow the Application.

This discussion of a possible new claim does not constitute an actual proposed amendment and cannot serve as a basis for denying consideration of this Reply (not Amendment), with respect to which Applicant expects a detailed response per MPEP §707.07(f).

Conclusion

All of the stated grounds of rejection have been rendered moot. Applicants therefore respectfully request that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Consideration of the requested examiner's Amendment is also respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to *telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

Pursuant to 37 C.F.R. §§ 1.17 and 1.36(a), Applicants respectfully petition for a one (1) month extension of time for filing a response in connection with the present application and the required fee of \$120.00 is attached hereto.

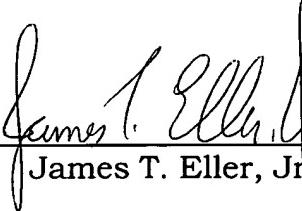
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Date: May 16, 2006

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By:


James T. Eller, Jr., #39,538

JTE/RJW/vd/cm 

P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000